

**CHAPTER 130**  
**SB 126-FN – FINAL VERSION**

03/21/13 0874s  
03/21/13 1066s  
22May2013... 1699h  
06/12/13 2027EBA  
06/12/13 2050EBA

2013 SESSION

13-0766  
05/10

SENATE BILL      ***126-FN***

AN ACT                      relative to business practices between motor vehicle manufacturers, distributors,  
and dealers.

SPONSORS:              Sen. Sanborn, Dist 9; Sen. Gilmour, Dist 12; Sen. Woodburn, Dist 1; Sen. Bradley,  
Dist 3; Sen. Watters, Dist 4; Sen. Pierce, Dist 5; Sen. Cataldo, Dist 6; Sen. Odell,  
Dist 8; Sen. Kelly, Dist 10; Sen. Lasky, Dist 13; Sen. Carson, Dist 14; Sen. Larsen,  
Dist 15; Sen. Boutin, Dist 16; Sen. D'Allesandro, Dist 20; Sen. Soucy, Dist 18;  
Sen. Fuller Clark, Dist 21; Sen. Morse, Dist 22; Sen. Stiles, Dist 24; Sen. Rausch,  
Dist 19; Sen. Forrester, Dist 2; Rep. Packard, Rock 5; Rep. Schlachman, Rock 18;  
Rep. Goley, Hills 8; Rep. Bouchard, Merr 18; Rep. Chandler, Carr 1

COMMITTEE:      Commerce

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ANALYSIS

     This bill revises business practices between motor vehicle manufacturers, distributors, and  
dealers.

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Explanation:              Matter added to current law appears in ***bold italics***.  
                                 Matter removed from current law appears [~~in brackets and struckthrough~~].  
                                 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

AN ACT relative to business practices between motor vehicle manufacturers, distributors, and dealers.

1        130:1 Section Heading and Definition of Motor Vehicle. Amend the section heading of RSA 357-  
2        C:1, the introductory paragraph of RSA 357-C:1, and RSA 357-C:1, I to read as follows:

I. “Motor vehicle” means every self-propelled vehicle manufactured and designed primarily for use and operation on the public highways and required to be registered and titled under the laws of New Hampshire~~, not including farm tractors and other machines and tools used in the production, harvesting, and care of farm products].~~ ***Motor vehicle shall include equipment if sold by a motor vehicle dealer primarily engaged in the business of retail sales of equipment.*** Except for RSA 357-C:3, I-b, and where otherwise specifically exempted from the provisions of this chapter, “motor vehicle” shall include off highway recreational vehicles and snowmobiles. ***“Equipment” means farm and utility tractors, forestry equipment, industrial equipment, construction equipment, farm implements, farm machinery, yard and garden equipment, attachments, accessories, and repair parts.***

VIII.(a) “Motor vehicle dealer” means any person engaged in the business of selling, offering to sell, soliciting or advertising the sale of new or used motor vehicles or possessing motor vehicles for the purpose of resale either on his ***or her*** own account or on behalf of another, either as his ***or her*** primary business or incidental thereto. ***“Motor vehicle dealer” also means a person granted the right to service motor vehicles or component parts manufactured or distributed by the manufacturer but does not include any person who has an agreement with a manufacturer or distributor to perform service only on fleet, government, or rental vehicles.*** However, “motor vehicle dealer” shall not include:

(1) Receivers, trustees, administrators, executors, guardians, or other persons appointed by or acting under judgment, decree or order of any court; or

25 (2) Public officers while performing their duties as such officers.

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(b) “New motor vehicle dealer” means a motor vehicle dealer who holds a valid sales and service agreement, franchise or contract granted by the manufacturer or distributor for the sale, ***service, or both***, of its new motor vehicles, ***but does not include any person who has an agreement with a manufacturer or distributor to perform service only on fleet, government, or rental vehicles.***

(c) ***The term “motor vehicle dealer” shall not include a single line equipment dealer. “Single line equipment dealer” means a person, partnership, or corporation who is primarily engaged in the business of retail sales of farm and utility tractors, forestry equipment, industrial and construction equipment, farm implements, farm machinery, yard and garden equipment, attachments, accessories, and repair parts, and who:***

***(1) Has purchased 75 percent or more of the dealer’s total new product inventory from a single supplier; and***

***(2) Has a total annual average sales volume for the previous 3 years in excess of \$100,000,000 for the relevant market area for which the dealer is responsible.***

130:3 Definition of Franchise. Amend RSA 357-C:1, IX to read as follows:

IX. “Franchise” means one or more oral or written agreements under or by which:

(a) The franchisee is granted the right to sell new motor vehicles or component parts manufactured or distributed by the franchisor ***or the right to service motor vehicles or component parts manufactured or distributed by the manufacturer but does not include any person who has an agreement with a manufacturer or distributor to perform service only on fleet, government, or rental vehicles;***

(b) The franchisee as an independent business is a component of the franchisor’s distribution or service system;

(c) The franchisee is granted the right to be substantially associated with the franchisor’s trademark, trade name or commercial symbol;

(d) The franchisee’s business is substantially reliant for the conduct of its business on the franchisor for a continued supply ***or service*** of motor vehicles, parts, and accessories; or

(e) Any right, duty, or obligation granted or imposed under this chapter is affected.

130:4 Definition of Designated Family Member. Amend RSA 357-C:1, XVIII to read as follows:

XVIII. “Designated family member” means the spouse, child, grandchild, parent, brother ~~[or]~~, sister, ***or lineal descendent, including all adopted or step descendants***, of the owner of a new motor vehicle dealership who has been designated in writing to the manufacturer, and, in the case of the owner’s death, is entitled to inherit the ownership interest in the new motor vehicle dealership under the terms of the owner’s will or under the rights of inheritance by intestate succession, or who, in the case of an incapacitated owner of a new motor vehicle dealership, has been appointed by a court as the legal representative of the new motor vehicle dealer’s property. ***The***

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*manufacturer, distributor, factory branch or factory representative or importer may request, and the designated family member shall provide, upon request, personal and financial data that is reasonably necessary to determine whether the succession should be honored.*

130:5 New Paragraph; Definition of Chargeback. Amend RSA 357-C:1 by inserting after paragraph XXIX the following new paragraph:

XXX. “Chargeback” means a manufacturer induced return of warranty, incentive, or reimbursement payments to a manufacturer by a dealer. The term includes a manufacturer drawing or an announced intention to draw funds from an account of a dealer.

130:6 Prohibited Conduct. Amend RSA 357-C:3, III(k) to read as follows:

(k) Compete with a motor vehicle dealer operating under an agreement or franchise from such manufacturer or distributor in the relevant market area; provided, however:

(1) If any manufacturer, distributor, distributor branch or division, or factory branch or division, either directly or indirectly, or through any subsidiary, affiliated entity, or person, owns, operates, or controls, in full or in part, a motor vehicle dealership in this state for the sale or service of motor vehicles in this state, the relevant market area shall be the area within the entire state of New Hampshire and, except for circumstances in which subparagraph (3) may apply, the New Hampshire motor vehicle industry board shall find good cause under RSA 357-C:9 before any such ownership, operation, or control shall be permitted. In addition to those factors listed in RSA 357-C:9, II, the board in such circumstances shall also consider in its determination of good cause whether the proposed dealership will create an unfair method of competition to other franchisees of the same manufacturer, distributor, distributor branch or division, factory branch or division, subsidiary, or affiliated entity;

(2) That a manufacturer or distributor shall not be deemed to be competing when operating a dealership either temporarily, for a reasonable period in any case not to exceed 2 years; provided that if a manufacturer or distributor shows good cause, the board may extend this time limit and extensions may be granted by the board for periods of up to 12 months; or unless the manufacturer or dealer through a bona fide relationship in which an independent person has made a significant investment subject to loss in the dealership and can reasonably expect to acquire full ownership of such dealership on reasonable terms and conditions; ~~and~~

(3) A manufacturer that has no more than 5 franchised new motor vehicle dealers ~~[licensed to do]~~ **doing** business in this state and that directly or indirectly owns one or more of them shall not be deemed to be competing with any unaffiliated new motor vehicle dealer trading in the manufacturer’s line make at a distance of 18 miles or greater provided that:

(A) All the new motor vehicle dealerships selling such manufacturer’s motor vehicles trade exclusively in the manufacturer’s line make;

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(B) As of March 1, 2000, the manufacturer shall have directly or indirectly owned one or more new motor vehicle dealers in this state for a continuous period of at least one year; and

(C) Neither the manufacturer nor any entity in which the manufacturer has a majority ownership interest shall acquire, operate, or control any dealership that the manufacturer did not directly or indirectly own as of March 1, 2000; **and**

***(4) A manufacturer or distributor that sells and services motor vehicles in New Hampshire and is licensed as a dealer in New Hampshire shall not be deemed to be competing with any dealer if no dealer or other franchisee sells and services the same line make in New Hampshire.***

130:7 Prohibited Conduct. Amend RSA 357-C:3, III(o) to read as follows:

(o) Change the relevant market area set forth in the franchise agreement without good cause. For purposes of the subparagraph, good cause shall include, but not be limited to, changes in the dealer's registration pattern, demographics, customer convenience, and geographic barriers[;]. ***At least 60 days prior to the effective date of the revised relevant market area, the manufacturer or distributor shall provide the dealer whose relevant market area is subject to the proposed change, a reasonable and commercially acceptable copy of all information, data, evaluations, and methodology that the manufacturer or distributor considered, reviewed, or relied on or based its decision on, to propose the change to the dealer's relevant market area;***

130:8 Prohibited Conduct. Amend RSA 357-C:3, III(s)(3)(A) to read as follows:

(A) A designated family member or members including any of the following members of one or more dealer owners:

- (i) The spouse.
- (ii) A child.
- (iii) A grandchild.
- (iv) The spouse of a child or a grandchild.
- (v) A sibling.
- (vi) A parent.

***(vii) Stepchildren.***

***(viii) Any adopted descendants.***

***(ix) Any lineal descendants.***

130:9 New Subparagraphs; Prohibited Conduct. Amend RSA 357-C:3, III by inserting after subparagraph (t) the following new subparagraphs:

(u)(1) Allocate vehicles, to evaluate the performance of a motor vehicle franchise, or to offer to a dealer any discount, incentive, bonus, program, allowance or credit (collectively

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“incentives”), using sales effective measurements that the manufacturer knows or reasonably should know includes exported vehicles, after being provided with notice and the opportunity to conduct an investigation as provided in subparagraph (u)(3). “Sales effective measurement” means a system that measures how effective a franchisee is at selling vehicles by comparing vehicle sales by that franchisee in the territory or geographic region assigned to the franchisee to vehicles sold in the same territory by other franchisees, or other similar methods of measurement. For the purposes of this section, “exported vehicles” are new vehicles that: (i) are titled in New Hampshire but not registered in New Hampshire or any other state; (ii) are titled and registered in New Hampshire but not issued a valid New Hampshire state inspection sticker; or (iii) are exported out of the country within 6 months of purchase.

(2) If a manufacturer uses sales effective measurements to allocate vehicles, evaluate a franchisee, or determine incentives, the manufacturer, upon the written request of one of its franchisees, shall, within 30 days, provide the vehicle identification numbers that the manufacturer possessed and used in the measurements during the time period requested by the dealer.

(3) If a manufacturer uses sales effective measurements to allocate vehicles, evaluate a franchisee, or determine incentives, a dealer may request that the manufacturer or distributor investigate a claim that exported vehicles are included in the measurements. To initiate the investigation, the dealer shall provide reasonable documentation that 8 or more exported vehicles were used in the measurements. Acceptable documentation shall include, but not be limited to, data from the division of motor vehicles and vehicle history reports from third party vendors. Within 30 days of the dealer’s request, the manufacturer shall investigate the claim and adjust those measurements proportionately to exclude any exported vehicles and adjust the allocation, evaluation, and incentives. As part of the investigation, the manufacturer shall provide the dealer with any and all information, data, evaluations, methodology or other items, that the manufacturer or distributor considered, reviewed, or relied on, for the measurement. The manufacturer shall have the burden to prove that it has acted in accordance with the requirements of this subparagraph.

(v) Require adherence to a performance standard or standards which are not applied uniformly to other similarly situated dealers. In addition to any other requirements of law, the following shall apply:

(1) A performance standard, sales objective, or program for measuring dealer performance that may have a material effect on a dealer, including the dealer’s right to payment under any incentive or reimbursement program, and the application of the standard, sales objective or program by a manufacturer, distributor or factory branch, shall be fair, reasonable, equitable and based on accurate information.

(2) Prior to beginning any incentive or reimbursement program, the manufacturer

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1 shall provide in writing to each dealer of the same line-make that chooses to participate in the  
2 program the dealer's performance requirement or sales goal or objective, which shall include a  
3 detailed explanation of the methodology, criteria, and calculations used. The manufacturer shall  
4 provide each dealer with the performance requirement or sales goal or objective of all dealers  
5 participating in the program whose relevant market area includes territory within this state.

6 (3) A manufacturer shall allocate an adequate supply of vehicles, appropriate to the  
7 market, to its dealers by series, product line, and model to assist the dealer in achieving any  
8 performance standards established by the manufacturer and distributor.

9 (4) A dealer that claims that the application of a performance standard, sales  
10 objective, or program for measuring dealership performance does not meet the standards listed in  
11 subparagraph (1) may request a hearing before the motor vehicle industry board pursuant to  
12 RSA 357-C:12.

13 (5) The manufacturer or distributor has the burden of proving by a preponderance of  
14 the evidence that the performance standard, sales objective, or program for measuring dealership  
15 performance complies with this subparagraph.

16 (w)(1) Require a dealer to purchase goods or services from a vendor selected, identified,  
17 or designated by a manufacturer, factory branch, distributor, distributor branch, or one of its  
18 affiliates by agreement, program, incentive provision, or otherwise without making available to the  
19 dealer the option to obtain the goods or services of substantially similar quality and overall design  
20 from a vendor chosen by the dealer and approved by the manufacturer, factory branch, distributor,  
21 or distributor branch; provided that such approval shall not be unreasonably withheld, and further  
22 provided that the dealer's option to select a vendor shall not be available if the manufacturer or  
23 distributor provides substantial reimbursement for the goods or services offered. Substantial  
24 reimbursement is equal to or greater than 65 percent of the cost, which shall not be greater than the  
25 cost of reasonably available similar goods and services in close proximity to the dealer's market.

26 (2) Fail to provide to a dealer, if the goods and services to be supplied to the dealer  
27 by a vendor selected, identified, or designated by the manufacturer, factory branch, distributor, or  
28 distributor branch are signs or other franchisor image or design elements or trade dress to be leased  
29 to the dealer, the right to purchase the signs or other franchisor image or design elements or trade  
30 dress of substantially similar quality from a vendor selected by the dealer; provided that the signs,  
31 images, design elements, or trade dress are approved by the manufacturer, factory branch,  
32 distributor, or distributor branch and that such approval shall not be unreasonably withheld. This  
33 section shall not be construed to allow a dealer to impair or eliminate the intellectual property rights  
34 of the manufacturer, factory branch, distributor, or distributor branch, nor to permit a dealer to erect  
35 or maintain signs that do not conform to the intellectual property usage guidelines of the  
36 manufacturer, factory branch, distributor, or distributor branch.

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(x) Make any express or implied statement or representation directly or indirectly that the dealer is under any obligation whatsoever to offer to sell or sell any extended service contract or extended maintenance plan, gap policy, gap waiver, or other aftermarket product or service offered, sold, backed by, or sponsored by the manufacturer or distributor or to sell, assign, or transfer any of the dealer's retail sales contracts or leases in this state on motor vehicles manufactured or sold by the manufacturer or distributor to a finance company or class of finance companies, leasing company or class of leasing companies, or other specified person, because of any relationship or affiliation between the manufacturer or distributor and the finance company or companies, leasing company or leasing companies, or the specified person or persons. Provided, however, that nothing in this subparagraph prohibits a manufacturer from requiring that a dealer disclose to a customer when the customer is about to purchase a product covered by this subparagraph that is not offered, sold, backed by, or sponsored by the manufacturer or distributor.

(y) Directly or indirectly condition the awarding of a franchise to a prospective franchisee, the addition of a line-make or franchise to an existing franchisee, the renewal of a franchise of an existing franchisee, the approval of the relocation of an existing franchisee's facility, or the approval of the sale or transfer of the ownership of a franchise on the willingness of a franchisee, proposed franchisee, or owner of an interest in the dealership facility to enter into a site control agreement or exclusive use agreement. For purposes of this subparagraph, the terms "site control agreement" and "exclusive use agreement" include any agreement that has the effect of either requiring that the franchisee establish or maintain exclusive dealership facilities or restricting the ability of the franchisee, or the ability of the franchisee's lessor in the event the dealership facility is being leased, to transfer, sell, lease, or change the use of the dealership premises, whether by sublease, lease, collateral pledge of lease, option to purchase, option to lease, or other similar agreement, regardless of the parties to such agreement. Any provision contained in any agreement that is inconsistent with the provisions of this subparagraph shall be voidable at the election of the affected franchisee, prospective franchisee, or owner of an interest in the dealership facility, provided this subparagraph shall not apply to a voluntary agreement where separate and valuable consideration has been offered and accepted, provided that the renewal of a franchise agreement or the manufacturer's waiver of a contractual or statutory right shall not by itself constitute separate and valuable consideration. Except as provided in this subparagraph, this chapter shall not apply to prospective franchisees.

(z) Notwithstanding the terms, provisions, or conditions of any agreement or franchise, require any motor vehicle dealer to floor plan any of the dealer's inventory or finance the acquisition, construction, or renovation of any of the dealer's property or facilities by or through any financial source or sources designated by the manufacturer, factory branch, distributor, or distributor branch,



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1 including any financial source or sources that is or are directly or indirectly owned, operated, or  
2 controlled by the manufacturer, factory branch, distributor, or distributor branch.

3 130:10 New Paragraph; Prohibited Conduct; Limitation on Alterations. Amend RSA 357-C:3 by  
4 inserting after paragraph IV the following new paragraph:

5 V.(a) Notwithstanding the terms of a franchise agreement or sales and service agreement or  
6 any other agreement, to require, coerce, or attempt to coerce any new motor vehicle dealer by  
7 program, policy, standard, or otherwise to:

8 (1) Change location of the dealership;

9 (2) Construct, renovate, or make any substantial changes, alterations, or remodeling  
10 to a motor vehicle dealer's sales or service facilities;

11 (3) Add to or replace a motor vehicle dealer's sales or service facilities; or

12 (4) Add to or replace or relocate purchased or leased signage or prohibit a dealer  
13 from substituting a sign owned by a dealer pursuant to RSA 357-C:3, III(w).

14 (b) The prohibitions in subparagraph (a) shall not apply if the manufacturer's or  
15 distributor's requirements are reasonable and justifiable in light of the current and reasonably  
16 foreseeable economic conditions, financial expectations, availability of additional vehicle allocation,  
17 and motor vehicle dealer's market for the sale and service of vehicles, or the alteration is reasonably  
18 required to effectively display and service a vehicle based on the technology of the vehicle. The  
19 manufacturer or distributor shall have the burden of proving that changes, alterations, remodeling,  
20 or replacement to a motor vehicle dealer's sales or service facilities or signage are reasonable and  
21 justifiable under this subparagraph.

22 (c) Any cost to obtain a variance or other approval from any governmental body in order  
23 to proceed under subparagraph (a) shall be paid by the dealer in the first instance. When  
24 subsequent efforts are required to obtain the variance or other approval, including any appeals, the  
25 manufacturer or distributor that is seeking the action listed in subparagraphs (a)(1) through (a)(4)  
26 shall pay, provided that such subsequent efforts were not required because of clerical error or  
27 negligent action or inaction on the part of the dealer.

28 (d) Except as necessary to comply with health or safety laws or to comply with  
29 technology requirements necessary to sell or service a vehicle, it is unreasonable and not justifiable  
30 for a manufacturer or distributor to require, coerce, or attempt to coerce any new motor vehicle  
31 dealer by program, policy, facility guide, standard or otherwise to change the location of the  
32 dealership or construct, replace, renovate or make any substantial changes, alterations, or  
33 remodeling to a motor vehicle dealer's sales or service facilities before the 15th anniversary of the  
34 date of issuance of the certificate of occupancy or the manufacturer's approval, whichever is later,  
35 from:

36 (1) The date construction of the dealership at that location was completed if the

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1 construction was in substantial compliance with standards or plans provided by a manufacturer,  
2 distributor, or representative or through a subsidiary or agent of the manufacturer, distributor, or  
3 representative; or

4 (2) The date a prior change, alteration, or remodel of the dealership at that location  
5 was completed if the construction was in substantial compliance with standards or plans provided by  
6 a manufacturer, distributor, or representative or through a subsidiary or agent of the manufacturer,  
7 distributor, or representative.

8 (e) Notwithstanding the 15-year limitation on manufacturer-mandated changes in  
9 subparagraph (d), the limitation shall not be effective if the manufacturer or distributor offers  
10 substantial reimbursement for the requested changes, alterations, or remodeling of a dealer's sales  
11 or service facilities. Substantial reimbursement is equal to or greater than 65 percent of the cost,  
12 which shall not be greater than the cost of reasonably available similar goods and services in close  
13 proximity to the dealer's market.

14 (f) This paragraph shall not apply to a program that is in effect with one or more motor  
15 vehicle dealers in this state on the effective date of this subparagraph, nor to any renewal or  
16 modification of such a program.

17 130:11 New Section; Access to Documentation. Amend RSA 357-C by inserting after section 3  
18 the following new section:

19 357-C:3-a Access to Documentation.

20 I. Once annually, a dealer may request to obtain a copy of (i) reports created in the regular  
21 course of business about the dealer, (ii) written correspondence with the dealer, and (iii) written  
22 reports prepared by a representative of the manufacturer or distributor documenting or  
23 memorializing any contact with a dealer or any employee or agent of the dealer, collectively known  
24 as "the documentation." The documentation required to be produced shall be limited to  
25 documentation created in the 12 months preceding the dealer's request. The manufacturer or  
26 distributor shall provide the documentation to the dealer within 30 days of the dealer's written  
27 request. The manufacturer shall certify that the documentation it produces is complete as of the  
28 date of the request. The manufacturer or distributor may charge the dealer a reasonable per page  
29 fee for reproduction, provided that such fee shall not exceed the usual and customary fee charged by  
30 copy centers in the immediate vicinity of the location of the documentation. No other fees or charges  
31 shall be permitted.

32 II. Any documents or portions of documents that are required to be produced pursuant to  
33 this section, which are not produced by the manufacturer or distributor in response to a dealer's  
34 request and that the manufacturer or distributor did not make a written, good faith objection to  
35 producing shall be excluded and not admissible as evidence or used in any manner at any proceeding  
36 at the motor vehicle industry board or any other state agency or any court proceeding. This

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paragraph shall not apply to any documents that document, evidence, or demonstrate insolvency, or alleged criminal, unlawful, or fraudulent activity by the dealer. At any proceeding before the motor vehicle industry board, any state agency, or any court, the presiding hearing officer, judge, board, or agency, may admit documents otherwise inadmissible under this paragraph if it is found that the documents were withheld in good faith or by accident or mistake.

III. A complete copy of any written report of any nature prepared by a representative of the manufacturer or distributor after any contact with a dealer or any employee or agent of the dealer shall be provided to the dealer within 60 days of the report's creation.

IV. Nothing in the section shall require a manufacturer to disclose privileged, confidential, proprietary, or private third party information or information about another dealer or dealers and this includes but is not limited to names, addresses, financial data, and any other information relating to other dealers that may otherwise be referenced in the supporting documentation, except for specific information which is used by the manufacturer to compare the requesting dealer's performance with other dealers.

130:12 Warranty Obligations. Amend RSA 357-C:5, II(a) and (b)(1) to read as follows:

(a) The franchisor shall specify in writing to each of its new motor vehicle dealers ~~[licensed]~~ in this state, the dealers' obligations for warranty service on its products, shall compensate the new motor vehicle dealer for warranty service required of the dealer by the manufacturer, and shall provide the dealer the schedule of compensation to be paid such dealer for parts, work and service in connection with warranty services, and the time allowance for the performance of such work and service. ***Warranty service on trucks and equipment, except for those sold by a single line equipment dealer, shall include the cost, including labor, to transport a motor vehicle under warranty in order to perform the warranty work and to return the motor vehicle to the customer, or, if transporting the trucks and equipment to the dealership is not mechanically or financially feasible, to travel to and return from the locations of the motor vehicle if the warranty repairs are performed at the location of the motor vehicle; provided that reimbursement for travel time shall not exceed 4 hours.***

(b)(1) In no event shall a schedule of compensation for parts, work, and service in connection with warranty services fail to include reasonable compensation for diagnostic work, as well as ***parts***, repair service and labor ***under the warranty or maintenance plan, extended warranty, certified preowned warranty or a service contract, issued by the manufacturer or distributor or its common entity.*** Time allowances for the diagnosis and performance of warranty work and service shall be reasonable and adequate for the work to be performed. In no event shall any manufacturer, component manufacturer, or distributor pay its dealers an amount of money for warranty work that is less than that charged by the dealer to the retail customers of the dealer for non-warranty work of like kind. ***In accordance with RSA 382-A:2-329, the***

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1 *manufacturer shall reimburse the franchisee for any parts so provided at the retail rate*  
2 *customarily charged by that franchisee for the same parts when not provided in*  
3 *satisfaction of a warranty and computed under this subparagraph.* No claim which has been  
4 approved and paid by the manufacturer or distributor may be charged back to the dealer unless it  
5 can be shown that the claim was false or fraudulent, that the repairs were not properly made or were  
6 unnecessary to correct the defective condition, or that the dealer failed to reasonably substantiate  
7 that the claim was in accordance with the written requirements of the manufacturer or distributor in  
8 effect at the time the claim arose. *A manufacturer or distributor shall not deny a claim solely*  
9 *based on a dealer's incidental failure to comply with a specific claim processing*  
10 *requirement, or a clerical error, or other administrative technicality.*

11 (A) *The obligations imposed on motor vehicle franchisors by this section*  
12 *shall apply to any parent, subsidiary, affiliate, or agent of the motor vehicle franchisor if a*  
13 *warranty or service or repair plan is issued by that person instead of or in addition to one*  
14 *issued by the motor vehicle franchisor.*

15 (B)(i) *In determining the rate and price customarily charged by the*  
16 *motor vehicle dealer to the public for parts, the compensation may be an agreed percentage*  
17 *markup over the dealer's cost under a writing separate and distinct from the franchise*  
18 *agreement signed after the dealer's request, but if an agreement is not reached within 30*  
19 *days after a dealer's written request to be compensated under this section, compensation*  
20 *for parts shall be calculated by utilizing the method described in this paragraph.*

21 (ii) *If the dealer and the manufacturer are unable to agree to a*  
22 *percentage markup as provided by subparagraph (i), the retail rate customarily charged*  
23 *by the dealer for parts that the manufacturer is obligated to pay pursuant to RSA 382-A:2-*  
24 *329, shall be established by the dealer submitting to the manufacturer or distributor 100*  
25 *sequential nonwarranty or customer-paid service repair orders or 90 consecutive days of*  
26 *nonwarranty, customer-paid service repair orders, whichever is less, each of which*  
27 *includes parts that would normally be used in warranty repairs and covered by the*  
28 *manufacturer's warranty, covering repairs made not more than 180 days before the*  
29 *submission and declaring the average percentage markup. The retail rate so declared*  
30 *must be reasonable as compared to other same line-make dealers of similar size in the*  
31 *immediate geographic vicinity of the dealer or, if none exist, immediately outside the*  
32 *dealer's geographic relevant market area within this state. The declared retail rate shall*  
33 *go into effect 30 days following the date on which the dealer submitted to the manufacturer*  
34 *or distributor the required number of nonwarranty or customer-paid service repair orders*  
35 *(hereafter referred to as the "submission date") subject to audit of the submitted*  
36 *nonwarranty or customer-paid service repair orders by the manufacturer or distributor*

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1     *and a rebuttal of the declared retail rate. If the manufacturer or distributor wishes to*  
2     *rebut the declared retail rate it must so inform the dealer not later than 30 days after the*  
3     *submission date and propose an adjustment of the average percentage markup based on*  
4     *the rebuttal not later than 60 days after the submission date. If the dealer does not agree*  
5     *with the proposed average percentage markup, the dealer may file a protest at the motor*  
6     *vehicle industry board not later than 90 days after the submission date. In the event a*  
7     *protest is filed, the manufacturer has the burden of proof to establish that the dealer's*  
8     *submission is unreasonable as compared to other same line-make dealers of similar size in*  
9     *the immediate geographic vicinity of the dealer or, if none exist, immediately outside the*  
10    *dealer's geographic relevant market area within this state. In the event a dealer prevails*  
11    *in a protest filed under this provision, the dealer's increased parts and/or labor*  
12    *reimbursement shall be provided retroactive to the date the submission would have been*  
13    *effective pursuant to the terms of this section but for the manufacturer's denial.*

14                   (iii) *In calculating the retail rate customarily charged by the dealer*  
15    *for parts, the following work shall not be included in the calculation: routine maintenance*  
16    *not covered under any retail customer warranty, such as fluids, filters and belts not*  
17    *provided in the course of repairs; items that do not have an individual part number such*  
18    *as some nuts, bolts, fasteners and similar items; tires; vehicle reconditioning; parts covered*  
19    *by subparagraph (v); repairs for manufacturer special events and manufacturer*  
20    *discounted service campaigns; parts sold at wholesale or parts used in repairs of*  
21    *government agencies' repairs for which volume discounts have been negotiated by the*  
22    *manufacturer; promotional discounts on behalf of the manufacturer, internal billings,*  
23    *regardless of whether the billing is on an in-stock vehicle; and goodwill or policy*  
24    *adjustments.*

25                   (iv) *A manufacturer or distributor shall not require a dealer to*  
26    *establish the retail rate customarily charged by the dealer for parts and labor by an*  
27    *unduly burdensome or time-consuming method or by requiring information that is unduly*  
28    *burdensome or time consuming to provide including, but not limited to, part-by-part or*  
29    *transaction-by-transaction calculations. A dealer shall not declare an average percentage*  
30    *markup or average labor rate more than once in a calendar year. A manufacturer or*  
31    *distributor may perform annual audits to verify that a dealer's effective rates have not*  
32    *decreased and if they have may reduce the warranty reimbursement rate prospectively.*  
33    *Such audits shall not be performed more than once per calendar year at any dealer. The*  
34    *audit performed by the manufacturer shall be in accordance with the method to calculate*  
35    *the retail rate customarily charged by the dealer for parts as set out in subparagraph (ii)*  
36    *above and subject to the limitations in subparagraph (iii). If the dealer does not agree*

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1 *with the proposed average percentage markup, the dealer may file a protest at the motor*  
2 *vehicle industry board not later than 90 days after the manufacturer states the intended*  
3 *new retail rate as the result of the manufacturer's audit. In the event a protest is filed, the*  
4 *manufacturer has the burden of proof to establish that the proposed retail rate was*  
5 *calculated accurately and in accordance with this subparagraph. The proposed retail*  
6 *rate shall not be effective until the motor vehicle industry board issues a final order*  
7 *approving the proposed rate. If as the result of the audit performed in accordance with*  
8 *subparagraph (ii) the calculation shows that the dealer's average percentage markup is*  
9 *greater than the average percentage markup currently being used for the dealer's retail*  
10 *rate reimbursement, the dealer's average percentage markup shall be increased to the*  
11 *extent of the result of the audit. Any rate that is adjusted as a result of an audit performed*  
12 *in accordance with this subparagraph shall not be adjusted again until a period of 6*  
13 *months from the effective date of the change has lapsed.*

14 *(v) If a motor vehicle franchisor or component manufacturer supplies*  
15 *a part or parts for use in a repair rendered under a warranty other than by sale of that*  
16 *part or parts to the motor vehicle franchisee, the motor vehicle franchisee shall be entitled*  
17 *to compensation equivalent to the motor vehicle franchisee's average percentage markup*  
18 *on the part or parts, as if the part or parts had been sold to the motor vehicle franchisee by*  
19 *the motor vehicle franchisor.*

20 *(1) The requirements of this subparagraph shall not apply to entire engine*  
21 *assemblies, entire transmission assemblies, in-floor heating systems, and rear-drive axles*  
22 *("assemblies"). In the case of assemblies, the motor vehicle franchisor shall reimburse the*  
23 *motor vehicle franchisee in the amount of 30 percent of what the motor vehicle franchisee*  
24 *would have paid the motor vehicle franchisor for the assembly if the assembly had not been*  
25 *supplied by the franchisor other than by the sale of that assembly to the motor vehicle*  
26 *franchisee.*

27 *(2) The requirements of this subparagraph shall not apply to household*  
28 *appliances, furnishings, and generators of a motor home ("household items"). In the case*  
29 *of household items valued under \$600, the motor vehicle franchisor shall reimburse the*  
30 *motor vehicle franchisee in the amount of 30 percent of what the motor vehicle franchisee*  
31 *would have paid the motor vehicle franchisor for the household item if the household item*  
32 *had not been supplied by the franchisor other than by the sale of that assembly to the*  
33 *motor vehicle franchisee. For household items in excess of \$600, the markup would be*  
34 *capped as if the part were \$600. The motor vehicle franchisor shall also reimburse the*  
35 *franchisee for any freight costs incurred to return the removed parts.*

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(vi) *A manufacturer or distributor may not otherwise recover its costs for reimbursing a franchisee for parts and labor pursuant to this section.*

130:13 Warranty Obligations. Amend RSA 357-C:5, II(d)(2) and (3) to read as follows:

(2) A manufacturer, distributor, branch, or division shall retain the right to audit warranty claims for a period of ~~[one-year]~~ **9 months** after the date on which the claim is paid and charge back any amounts paid on claims that are false or unsubstantiated.

(3) A manufacturer, distributor, branch, or division shall retain the right to audit all incentive and reimbursement programs for a period of ~~[one-year]~~ **9 months** after the date on which the claim is paid or ~~[one-year]~~ **9 months** from the end of a program that does not exceed one year, whichever is later, and charge back any amounts paid on claims that are false or unsubstantiated.

130:14 Limitations on Cancellations. Amend the introductory paragraph of RSA 357-C:7, I to read as follows:

I. Notwithstanding the terms, provisions, or conditions of any agreement or franchise, and notwithstanding the terms or provision to any waiver, no manufacturer, distributor, or branch or division thereof shall cancel, terminate, fail to renew, or refuse to continue any franchise relationship with a ~~[licensed]~~ new motor vehicle dealer unless:

130:15 Limitation on Cancellations, Terminations and Nonrenewals. Amend RSA 357-C:7, III(d) to read as follows:

(d) The fact that the new motor vehicle dealer sells or transfers ownership of the dealership or sells or transfers capital stock in the dealership to the new motor vehicle dealer's spouse, son, or daughter. The manufacturer, distributor, or branch or division thereof shall give effect to such change in ownership unless, **if licensing is required by the state**, the transfer of the new motor vehicle dealer's license is denied or the new owner is unable to license as the case may be; and

130:16 Limitation on Cancellations, Terminations and Nonrenewals. Amend RSA 357-C:7, VI(a) and (b) to read as follows:

(a) The dealer cost plus any charges by the manufacturer, distributor, or branch or division thereof for distribution, delivery, and taxes paid by the dealer, less all allowances paid to the dealer by the manufacturer, distributor, or representative, for new, unsold, undamaged and complete motor vehicles in the dealer's inventory that have original invoices bearing original dates within 24 months prior to the effective date of termination with less than 750 miles on the odometer, and insurance costs, and floor plan costs from the effective date of the termination to the date that the vehicles are removed from dealership or the date the floor plan finance company is paid, whichever occurs last. Vehicles with a gross vehicle weight rating over 14,000 shall be exempt from the 750 mile limitation. Motorcycles shall be subject to a 350 mile limitation. All vehicles shall have been acquired from the manufacturer or another same line make vehicle dealer in the ordinary course of

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business. *Equipment shall be subject to a 36-month limitation. Payment for farm and utility tractors, forestry equipment, industrial, construction equipment, farm implements, farm machinery, yard and garden equipment, attachments, accessories and repair parts shall include all items attached to the original equipment by the dealer or the manufacturer other than items that are not related to the performance of the function the equipment is designed to provide.*

(b) The dealer cost of each new, unused, undamaged, and unsold part or accessory if such part or accessory is in the current parts catalog, was purchased from the manufacturer or distributor or from a subsidiary or affiliated company or authorized vendor, and is still in the original, resalable merchandising package and in unbroken lots, except that in the case of sheet metal, a comparable substitute for the original package may be used. *Any part or accessory that is available to be purchased from the manufacturer on the date the notice of termination issued shall be considered to be included in the current parts catalog.*

130:17 Limitation on Establishing or Relocating Dealerships. Amend RSA 357-C:9, II(f) to read as follows:

(f) Growth or decline in population and new ~~car~~ *motor vehicle* registration in the relevant market area.

130:18 Repeal. RSA 347-A, relative to equipment dealers, is repealed.

130:19 Effective Date. This act shall take effect 90 days after its passage.

Approved: June 25, 2013

Effective Date: September 23, 2013